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Attorneys for Plaintiff  
James E. Mayo

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

JAMES E. MAYO,

Plaintiff,

vs.

A.O. SMITH CORPORATION, et al.,

Defendants.

) Case No. CV 08 0058 MMC

) **DECLARATION OF SEAN P.  
WORSEY IN SUPPORT OF  
APPLICATION FOR ORDER  
SHORTENING TIME FOR HEARING  
OF PLAINTIFF'S MOTION FOR  
REMAND**

) **Date: February 29, 2008 (current hrg date)**

) **Time: 9:00 a.m.**

) **Room: Courtroom 7, 19<sup>th</sup> Floor**

) **HON. MAXINE M. CHESNEY**

I, Sean P. Worsey, do hereby declare,

1. I am an attorney at law, licensed to practice in the courts of the State of California. I am associated with the law firm of Levin Simes Kaiser & Gornick, LLP, attorneys of record for plaintiff herein. I have personal knowledge of the matters stated herein and if called as a witness, could competently testify thereto.

2. Plaintiff James Mayo ("plaintiff") brought an action for damages in the Superior Court of California in and for the County of Alameda, after receiving a diagnosis of mesothelioma in

1 August 2007. Plaintiff's action was filed on November 21, 2007. In his State Court action, Plaintiff  
2 named thirty-eight (38) defendants including various manufacturers and suppliers of asbestos  
3 containing materials to which he exposed during his long work history.

4 3. On January 4, 2008, a single defendant, Foster Wheeler, LLC ("Foster Wheeler") filed  
5 a Notice of Removal under 28 U.S.C. Section 1442(a)(1), on the alleged grounds that Foster Wheeler  
6 was acting under an officer or agency of the United States.

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8 4. On January 15, 2008, Plaintiff resolved his case against Foster Wheeler, the removing  
9 defendant, and received a stipulation from this party to remand the case to the Superior Court of  
10 California, Alameda County. Defendant's stipulation was filed with the Court earlier this week in  
11 support of Plaintiff's Motion to Remand.


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13 5. Plaintiff's treating physician, Koyamangalath Krishnan, M.D., executed a declaration  
14 earlier this week stating that Mr. Mayo was diagnosed with mesothelioma, a progressive and terminal  
15 disease. Dr. Krishnan expressed the opinion that there is substantial medical doubt that Plaintiff will  
16 survive beyond four months from date of this declaration. Attached hereto as **Exhibit A** is a true and  
17 correct copy of Dr. Krishnan's executed declaration, received by my office via facsimile transmission.

18  
19 6. Plaintiff is prepared to petition the Superior Court to set a trial date within 120 days,  
20 based upon C.C.P Section 36 (d), which allows terminally ill plaintiff like Mr. Mayo to obtain a  
21 speedy trial in a California court.

22 7. Because there is no equivalent procedure in Federal Court to obtain a preferential trial  
23 date, Plaintiff here will likely not survive to see his case come to trial, should this case not be  
24 promptly remanded to the Superior Court.  
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1           8. For all of the foregoing reasons, good cause exists for hearing plaintiff's Motion for  
2 Remand on shortened time, and plaintiff requests a hearing no later than Friday, February 8, 2008, or  
3 as soon thereafter as it may be added to the Court's calendar.  
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5           I declare under penalty of perjury under the laws of the State of California and of the United  
6 States that the foregoing is true and correct and based on my personal knowledge. Executed  
7 this 24 th day of January, 2008, at San Francisco, California.  
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11 SEAN P. WORSEY  
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# EXHIBIT A

EXHIBIT A

JAN. 22. 2008 12:08PM

LSK&G

NO. 9718 P. 2/5

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8 Attorneys for Plaintiffs  
9 JAMES MAYO

10 SUPERIOR COURT OF CALIFORNIA  
11 COUNTY OF ALAMEDA  
12 UNLIMITED JURISDICTION

13 JAMES MAYO,

14 Plaintiffs,

15 vs.

16 A.O. SMITH CORPORATION, et al.;

17 Defendants.  
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Case No. RG 07-357726

DECLARATION OF KOYAMANGALATH  
KRISHNAN M.D. IN SUPPORT OF  
PLAINTIFF'S MOTION TO SPECIALLY  
SET A TRIAL DATE

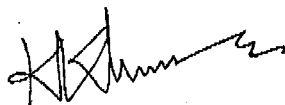
C.C.P. § 36 (a) (d)

21 I, KOYAMANGALATH KRISHNAN, M.D. hereby declare as follows:

22 1. I am a physician licensed to practice medicine in the State of Tennessee. I am board  
23 certified in Medical Oncology. My medical office is located at 400 State of Franklin Rd., 1<sup>st</sup> Floor,  
24 Johnson City, TN 37604.

25 2. James Mayo is a patient of my office and I last saw him on ~~December 31, 2007~~ <sup>January 23, 2008</sup>. He is  
26 presently seventy-five years of age, widowed with four children.  
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DECLARATION OF KOYAMANGALATH KRISHNAN, M.D.

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1           3.     In July of 2007 James Mayo was admitted to the emergency room at Johnson City  
2 Medical Center with a worsening cough and shortness of breath. His x-ray showed right lower lobe  
3 infiltrates on his chest. He was admitted for pneumonia.

4           4.     Admission to the hospital led to diagnostic imaging, which included a CT scan of the  
5 chest. Mr. Mayo was found to have a right hydropneumothorax with pleural thickening. There were  
6 small calcific nodules in both lungs and pleural plaques with right upper lobe granulomata.

7           5.     On July 30, 2007 Mr. Mayo was taken for operation by Dr. Daniel McCoy to address  
8 the pleural effusion and to gain tissue diagnosis.

9           7.     The pathology from the July 30, 2007 operation revealed that Mr. Mayo has malignant  
10 mesothelioma.

11           8.     I am currently treating Mr. Mayo for his mesothelioma.

12           9.     Mr. Mayo has had three courses of chemotherapy, which is not curative, but was  
13 instituted to control his disease for as long as possible

14           10.    Mr. Mayo suffers from weight loss, shortness of breath, fatigue, lethargy and pain. He  
15 is currently taking pain medications to manage his pain.

16           11.    Since the onset of symptoms of his illness, Mr. Mayo has not been able to participate in  
17 any physical activities.

18           12.    Mesothelioma is a progressive and terminal disease. It is painful, debilitating and  
19 exhausting. As a result, as time goes by, Mr. Mayo will be less and less able to meaningfully  
20 participate in all aspects of life. The average life expectancy for someone diagnosed with malignant  
21 mesothelioma is less than twelve months.

22           13.    The prognosis of individuals diagnosed with mesothelioma is extremely poor.  
23 Mesothelioma, or complications from mesothelioma will cause Mr. Mayo's death.

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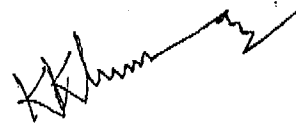
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1 14. Mesothelioma is often rapidly fatal. Oftentimes even patients who are relatively  
2 asymptomatic, take a turn for the worse, decline rapidly, and die in a matter of weeks. Thus, Mr.  
3 Mayo's legal involvement should happen as soon as possible in order for him to meaningfully  
4 participate in his lawsuit as his ability to participate will diminish as his physical stamina decrease  
5

6 15. In my opinion, Mr. Mayo's advanced age and cancer condition raises substantial  
7 medical doubt of his survival beyond four months from the date of this Declaration.

8 I declare under penalty of perjury under the laws of the State of California that the foregoing is  
9 true and correct and that this Declaration was executed this \_\_\_\_ day of January, 2008 at Johnson  
10 City, TN.



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13 KOYAMANGALATH KRISHNAN, M.D.  
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